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Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES

IN RE LOUTO J. BRAQUET, JR.,
Defendant-Relator-Relator.

(from United States of America v. Braquet)

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ORIGINAL PETITION FOR A WRIT OF MANDAMUS

WITH APPENDIX A

LOUTO J. BRAQUET, JR.
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Questions Presented for Mandamus

No personal jurisdiction

1. Did USOA ever give proper Notice?

    a. Is the irs an "interested party"?
    b. Doesn't a plaintiff have to serve proper Notice within 120 days?
    c. Aren't the equitable interest holders entitled to Notice?

No subject matter jurisdiction

2. How does USOA have standing?

    a. Where's evidence of signature authority?
    b. Where's the real party in interest?
    c. Where's even the *eo nomine* party?
    d. Where's any evidence of any "injury in fact"?

3. Doesn't a complaint for this type case have to be sworn?

Hideous violations of Due Process

4. Where was Braquet given a meaningful opportunity to be heard?

    a. Where's a hearing, any hearing?
    b. Where's a summary judgment proceeding?
    c. Where's a trial?

5. Do these irrebuttable presumptions still violate Due Process?

a. Where was USOA ever compelled to satisfy its threshold burden?

(If that burden was somehow proven, ...)

b. Where was Braquet ever allowed to prove up his Statute of Frauds defense?

c. Where was Braquet ever allowed to prove up his Patriot Act defense?

6. Hasn't USOA been relieved of its burden?

7. Does denial of discovery still constitute denial of access?

No Evidence

8. Where's proof that this suit was even authorized?

9. Where's any evidence supporting any part of the judgment?

10. Where's the verified assessment?

Capacity

11. How is the satisfaction of the "14th Amendment" reflected in any of the trial court's orders?

Mandamus

12. Isn't this void judgment properly vacated?

13. Isn't this case properly dismissed?

Parties

The mandamus sought is directed to the trial court:

Trial Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
Hon. LYNN HUGHES, presiding

Stated Plaintiff

UNITED STATES OF AMERICA

Hence, the Solicitor General's Office

The only two, named parties Defendant

LOUTO J. BRAQUET, JR.

COUNTRYWIDE HOME LOANS OF TEXAS, INC.
(silent to this very day)

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Petition for a Writ of Mandamus

Braquet petitions for a writ of mandamus to the United States District Court as follows:

Citations to decisions below

There must be a citation to the appellate opinion, since there's no footnote saying that it's *not* published, but the website doesn't even list No. 08-20023, published ***or*** unpublished.

Jurisdiction

(i) Date Order Was Entered
Trial court
Judgment: 5 Dec 2007 [+90: 4 Mar]
M/ Vacate Denied: 13 Dec 2007 [+90: 12 Mar]
Appellate court
Mandamus denied: 29 Jan 2008 [+90: 28 Apr]

(ii) Extension None

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. § 1651(a).

(v) Regarding notice of statutory challenge, Rule 29.4(b)
N/A

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial Court Jurisdiction

Per the complaint? None.

USOA, which foreign commercial enterprise is not registered to do business in the Buck Act federal area called "Texas", which has no standing, and which never proved that the suit was ever authorized in the first place, filed an unverified ***lien*** foreclosure suit under the signature of a DOJ employee.

In the face of *The Sarah*, *356 Bales of Cotton*, and *Romero*, just to cover the highlights, that complaint alleged jurisdiction under § 1331 ("federal question").

In the face of their very own marketing ("voluntary"), which has always given Notice of the actual legal mechanism, USOA's complaint also alleged jurisdiction under § 1340 ("Act of Congress").

In a hilarious confession of self-confusion, that complaint, filed by *USOA*, also alleged jurisdiction under § 1345 ("*United States*" as party plaintiff)! [1]

The key reasons § 7402 fails are duplicative of the foregoing, including the complete absence of any evidence that § 7401 was satisfied.

The Thunderous Silence

A change in attitude, perspective, and demeanor!

Have the editors at irs.gov been heard?! There's a magnificent distinction between, on the one hand, *Tello*, *Stearman*, *Wallis*, and *Florance*, and, on the other, the recent *In re Braquet* decision compelling this petition. So, there ***is*** hope for law over ego.

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[1] In *Colorado River*, among other cases, this Court suggest that for § 1345, "United States" means "Federal Government". Still, which is which? *Cf.* § 1746; § 3002(15)(A).

No personal jurisdiction

Summons was delivered by a party.

DOJ filed the suit on 11 September 2007. DOJ had an irs agent deliver those papers to Braquet. Among Braquet's prompt objections is his objection to the insufficiency of service. After the court entered its void judgment, DOJ then requested that the trial court allow the irs to sell Braquet's home. By DOJ's own hand, the irs is made to appear to be a real party in interest, meaning it never qualified to serve anything relevant to this case on anyone at any time.

No service within 120 days.

The trial court set 9 January 2008 as the date of sale. That happens also to be the last day for service. *See* Rule 4(m) (120 days). That date came and went without any competent service of anything.

No service on equitable interest owners.

Land ownership in this state isn't as clear as some would have us think. Just ask the Kelo family! Braquet may or may not have standing to raise this objection, but he fully expects he's duty bound to raise it. It's manifestly obvious that DOJ made absolutely no effort to serve any of the equitable interest holders in the property of focus. Where those equitable interest holders are known via "Big Brother's" public records, doesn't USOA have to serve them, too, given that the case sounds in equity?

No subject matter jurisdiction

No signature authority for USOA.

For there to be subject matter jurisdiction, there first must be a complaint. So, where is it? Where is any evidence establishing DOJ's signature authority for USOA? Where there is no authorized signature,

there is no document. Rule 11.

No real party in interest ever showed up.

Where is there any evidence that USOA is a real party in interest? Rule 17. Where is any evidence as to what/who is/are a/the real party(ies) in interest? There certainly is none in the complaint, or anywhere else in the Record, for that matter.

A new *eo nomine* party?

Rule 17(a) seems superabundantly clear. So, why is *this* suit not even filed by the *eo nomine* party?

No injury in fact.

The complaint suffers fatally from a spectacular absence of even stating a case.

HOW IS BRAQUET LIABLE, HERE, AT ALL?

(Notices of) Liens are commercial instruments. So, where's the commercial nexus? USOA fails even to allege how Braquet is liable in the necessary role, capacity, office. Rules 9(a), 17(a); BOGERT § 50 at 102, § 871 at 156 and nn.2, 3; RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959); *Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (2D) TRUSTS).

HOW IS BRAQUET LIABLE TO USOA?

USOA fails even to allege how it has the necessary role, capacity, office even to assert a claim. *See* SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112; TEX. PROP. CODE § 112.004.

If USOA is standing in for a named beneficiary, where's the unanimous consent agreement, and/or where's the subrogation agreement?

No verified complaint.

Rule 9(h). *Cf.* Rules B and C.

Rule B isn't as direct as Rule C. Thus, are *agency* in personam complaints verified but *judicial* in personam complaints not? That's conceivable, but it

seems a bit inconsistent. Or, is this not actually a forfeiture type proceeding? But, how can that be, in light of DOJ's bold infusion into this case of ***criminal*** "charges" against Braquet?

Hideous violations of Due Process

No Notice or opportunity to be heard!

This case went from unverified, unauthorized, unsigned complaint, by a party with no standing and no claim, to final judgment. Just like that. As already detailed, there was no Notice. To complete the travesty, there was no hearing of any type, kind, or nature. There was no summary judgment process, and there was definitely no trial.

This was a default judgment without any default. Why the charade? If there is to be no judicially supervised debate, why is a complaint even filed?

Directly after the "settlement conference", 3 December, which produced no settlement, DOJ submitted a proposed final order electronically. DOJ mailed a copy to Braquet. The trial court signed the "final judgment" on 5 December, which didn't even allow Braquet a chance to *receive* DOJ's proposed order, much less to file his objections to it.

Irrebuttable presumptions still violate Due Process!

USOA not only never had to *prove up* a claim, but also it never even had to *allege* a claim! USOA's burden was absolutely and completely relieved.

Presume that, somehow, an unverified, unauthorized, unsigned complaint that fails utterly even to allege a claim suffices these days to trigger a federal court's subject matter jurisdiction to enter a final judgment. How does a defendant even ***begin*** to

satisfy his burden of proof for affirmative defenses, e.g., Statute of Frauds, The Patriot Act, without a trial, without summary judgment, and without even a hearing? Thus, from this angle as well, USOA's burden was relieved, via irrebuttable presumption.

There is no writing signed by Braquet that satisfies the Statute of Frauds for any element of USOA's purported claim. If such a writing exists, USOA never offered it into evidence.

Even more glaringly absent is ***any*** evidence, whatsoever, that establishes the ***legality*** of USOA's purported claim. Presume into existence all of the necessary threshold-burden evidence found nowhere of Record. Presume discovery that never existed. Presume cross-examination that never existed. In "Big Brother's" "brave new 'know your customer' world", instigated via The Patriot Act, USOA now also carries the burden of production regarding the ***legality*** of each and every single one of its claims of this nature. The congress have outsmarted themselves in the past, e.g., gold clause, but there is no "second place" even *remotely* close to this one!

Pearl Harbor; JFK; ML King, Jr.; RFK; Ruby Ridge; Waco; marine barracks (Beirut); 1st WTC attack; the Murrah Building massacre; [2] TWA 800; S-11 (Washington, NYC, Shanksville); 7/7 (London); Sec. Brown; Vince Foster; MK-Ultra; ... . When the blind lead the blind, they all fall in the ditch. The

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[2] Where ***are*** the Iran/Contra investigation documents? Where ***are*** the Mena, Arkansas, drug-trafficking investigation documents? Truck bomb? What truck? We can reassemble a Space Shuttle but not a truck? A rear axle, but no engine, drive shaft, transmission, frame, cab, firewall, brake shoes, wheels, alternator, or A/C compressor? What truck? Judicial Notice.

egregious grotesqueness involved is a permanently putrid, gagging stench. ***Legality***, per The Patriot Act, will forever be ***impossible*** to establish, and that by (mere) Judicial Notice.

No Evidence

Before § 7402 is § 7401.

DOJ alleges that the suit is authorized. Braquet says, "Prove it!"

Before judgment there is evidence.

DOJ says that USOA *has* a claim. Braquet says, "Prove it!" The plaintiff is right in his cause, till the defendant comes on to examine.

And, before judgment in a § 7201 (*payment*) case, there is a verified assessment!

Braquet filed about 10 different motions to dismiss, on which there is not one ruling. In its consolidated response, DOJ charged Braquet with "evading" "payment". Thus, DOJ instantly transformed a § 7401 commercial collections matter into a § 7201 quasi-criminal collections matter. By so boldly charging "evasion" of "payment", DOJ instantly triggered the need to prove up, in addition to everything else, a verified assessment. That doesn't exist, either!

Capacity

Braquet is fully satisfied that both active parties have adequately waived their objections to the debts of the United States. Countrywide, which has not participated to this day, has done so by its silence. Still, not *one* of the trial court's orders reflects that fact or even *recognizes* the "14th Amendment". Thus, all orders are *prima facie* void.

Mandamus

Void judgments, generally.

If the irs *is* a party, or is estopped from denying that role, then there is no personal jurisdiction, for there is no Notice, and the time period has expired.

Moreover, there is no subject matter jurisdiction, for there is no standing, no complaint, no plaintiff, no claim, and no real party in interest, in addition to the hideous violations of Due Process.

Void judgments are not subject to appeal, because they aren't "final". That leaves mandamus.

Dismissal.

In most cases, the real parties in interest would be allowed to replead. A new trial would permit DOJ to cure many of the currently fatal problems. Dismissal would follow from a refusal to do so.

However, some of these fatal errors cannot be cured, including the lack of signature authority, Rule 4(m) (120 days), the various capacity issues, and The Patriot Act issues. Moreover, plaintiff has had ample Notice of the need to replead, the need to substitute in the real parties in interest, and the need to produce certain critical evidence, and has very clearly refused. Instead of repleading and providing evidence, DOJ retaliated, "charging" Braquet ***criminally***. So, dismissal is hardly too harsh.

Argument

No personal jurisdiction

1. Did USOA ever give proper Notice?

> [I]t has been settled, that a judgment depending upon proceedings in personam can have no force as to one on whom there has been no service of process, actual or constructive; who has had no day in court, and no notice of any proceeding against him. That with respect to such a person, such a judgment is absolutely void ....

Harris, 55 U.S. at 339. *See also Milliken* (the Wyoming judgment was valid because service was valid; hence, the Wyoming court *did* have personal jurisdiction); *Peralta* (even "meritorious defense" issue is irrelevant to question of Notice). *See also Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."); *Hamdi*; *International Shoe*; *Mullane*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*.

a. Is the irs an "interested party"?

Rule 4(c)(2).

> (2) Service may be effected by any person who is not a party ....

Rule 4(c)(2).

Systemic confusion.

Since USOA isn't even the proper *eo nomine* party, the actual real parties in interest remain unknown. However, here's the first train wreck. If the irs is not an "interested party" in *federal* court, its comm'r is not an "interested party" in *Tax* Court.

Thus, where the comm'r purports to be a real party in interest for purposes of *Tax* Court cases, how is the irs, via its agents, anything but a real party in interest in *federal* court cases?

Of course, where comm'r is ***not*** a real party in interest in *Tax* Court, it follows that irs agents ***may*** serve *federal* court "tax case" paperwork.

Estoppel via actions.

Here's the second train wreck. Where DOJ wants, *post*-judgment, to have the trial court authorize the ***irs*** to sell the home, it follows that the ***irs*** is just as interested from the outset. Where the irs *act* like a party, how do they avoid the Rule 4(c)(2) restriction?

b. Doesn't a plaintiff have to serve proper Notice within 120 days?

Rule 4(m).

There was only the one effort at delivery of summons and complaint. Rule 4(m) requires that service be completed within 120 days after the suit is filed. Thus, the deadline for service of the suit filed 11 September was 9 January.

c. Aren't the equitable interest holders entitled to Notice?

Cf. Pacific Live Stock Co., 241 U.S. at 449 (equitable determination of water rights required presence of all interested parties); *Colorado River* (all parties to water rights management program were properly before the *state* court).

How does ***any*** suit in equity proceed without proper notice to all interested/affected parties? *Cf. Martin* (non-parties to an agreement (consent decree)

are not bound by it); Rules 19(a), (b).

How can "Big Brother" gather and publicize all these private details but then not be held responsible for having that information? Even more challenging still, how *does* one property serve, simultaneously, as two separate *res*'s? Collateral? Ok. But *res*'s??!

No subject matter jurisdiction

2. How does USOA have standing?

Rules 9(a) and 17(b). § 3002(15)(A); § 321(d). *Cf. Arnold* (applying *Booker*, at trial, a year and a half **before** *Booker* existed, and *Blakely*, a year **before** it existed; non-agreement vitiates "evidence" used for "sentencing"); *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion); BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."), § 871 at 156 and nn.2, 3 (where beneficiary fails to prove damages, there is no recovery); RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959); *Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (2D) TRUSTS); *See* SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112; TEX. PROP. CODE § 112.004.

a. Where's evidence of signature authority?

Rule 11. What/who is USOA, and how does DOJ have authority to sign for it, unless it's a foreign commercial entity? Since it's not a registered foreign or domestic commercial entity in "Texas", where is its capacity to show up in court as a plaintiff at all, even *with* signature authority?

b. Where's the real party in interest?

Rules 9(a) and 17(b). § 3002(15)(A); § 321(d). *Cf. Arnold* (non-agreement vitiates "evidence" used for "sentencing"); *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion); BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."), § 871 at 156 and nn.2, 3 (where beneficiary fails to prove damages, there is no recovery); RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959); *Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (2D) TRUSTS); *See* SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112; TEX. PROP. CODE § 112.004.

c. Where's even the *eo nomine* party?

Rule 17(a).

d. Where's any evidence of any "injury in fact"?

Lujan.

3. Doesn't a complaint for this type case have to be sworn?

Rule B suggests what Rule C overtly requires. Per Rule B, even prior to DOJ's injecting the *England* issue in this case, DOJ had to submit a verified complaint. Per Rule C, once DOJ converted this into a § 7201 (*payment*) collections case, the need for a verified complaint was set in concrete.

Hideous violations of Due Process

4. Where was Braquet given a meaningful opportunity to be heard?

"Sentence first—then verdict! [*then* trial!]"

No trial; no summary judgment; not even a hearing, of any type, kind, or nature.

Milliken; *Peralta*; *Hamdi*; *International Shoe*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie* (denial of access); *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*.

a. Where's a hearing, any hearing?

Harris, 55 U.S. at 339; *Boddie* (denial of access).

b. Where's a summary judgment proceeding?

Harris, 55 U.S. at 339; *Boddie* (denial of access).

c. Where's a trial?

Harris, 55 U.S. at 339; *Boddie* (denial of access).

5. Do these irrebuttable presumptions still violate Due Process?

No opportunity to be heard.

Where there is no Notice and/or no opportunity to be heard, all evidentiary burdens are satisfied by nothing except irrebuttable presumptions. This is a rather ancient version of rebellion against Due Process. *Elkins*; *Salfi* (in particular part III, which distinguishes *Salfi*); *LaFleur*; *Vlandis*; *Stanley*.

An attempt to compel agreement?

There is no agreement, but if the judicial process has been invoked to try to compel one, it wouldn't work, anyway. No compelled agreement is valid. *Burger King*, 471 U.S. at 486. *Cf.* Social Security cannot be compelled; *see* Form SS-5; 20 C.F.R. § 422.103(b)(1); use of "funny money" (§ 5103) cannot be compelled; wills cannot be compelled; *see* 1 PAGE, THE LAW OF WILLS §§ 5.7, 15.11; trusts cannot be compelled; BOGERT, THE LAW OF TRUSTS AND TRUSTEES §§ 42 at 434, 44 at 452 and n.16; commercial agreements cannot be compelled; *see* UCC, typically § 1-103 (regarding the defense of undue influence). *See also Felter* (recognizing a statutory right to be free from compelled consent regarding an agreement). In sum, no evidence of any type, kind, or nature, is relevant *or* competent where there's compelled consent. *See Escobedo v. Illinois* and *Miranda v. Arizona*.

If ambulance chasers can't compel agreements, how much *less* likely is it that a **court** can compel an agreement? *Ohralik* (limiting "in person" solicitation; thus, limiting duress, coercion, and undue influence as engaged in by the legal profession). *See also Bates* (regarding "by mail" solicitation and other forms of advertising of legal services). Ethics are still fully enforced. *See e.g. Garcetti v. Ceballos* (attorneys who testify against their clients are fortunate still to have their licenses, much less their jobs).

Irrebuttable presumptions and compelled agreements have something in common: they both violate Due Process.

a. Where was USOA ever compelled to satisfy its threshold burden?

See Questions 2 and 2(b).

(If that burden was somehow proven, ...)

b. Where was Braquet ever allowed to prove up his Statute of Frauds defense?

On the one hand, the defendant has to prove up his affirmative defense. *Dixon*.

However, on the other, in the face of Braquet's objection, USOA/DOJ provided no written agreement regarding anything. TEX. PROP. CODE § 112.004. Thus, there's (A) no standing, (B) no claim, *and* (C) full satisfaction of the *defense*, all at the same time.

c. Where was Braquet ever allowed to prove up his Patriot Act defense?

On the one hand, the defendant has to prove up his affirmative defense. *Dixon*. But, where the information is in the possession of the opponent, and where there's no discovery, the opponent carries the burden of production.

USOA/DOJ never proved up the "money trail", leaving wide open, actually confessing, the "know your customer" problem. Given the nature of review of matters in equity, Judicial Notice is more than adequate to sustain *this* defense, with or without trial, summary judgment, or even one single, solitary hearing on anything.

6. Hasn't USOA been relieved of its burden?

From a summary judgment analysis, there's the following: *Beard* (citing *Anderson*, 477 U.S. at 255); *Scott* (citing *Diebold*, 369 U. S. at 655).

From a trial analysis, there's the following: *Mullaney* (citing *In re Winship*); *Heiner*.

7. Does denial of discovery still constitute denial of access?

Ins. Corp. v. Compagnie des Bauxites; *Hammond Packing Co.*, 212 U.S. at 350-51; *Roadway Express, Inc.* (citing *National Hockey League* (citing *Societe Internationale*, 357 U.S. at 212-13)).

No Evidence

8. Where's proof that this suit was even authorized?

In the face of Braquet's objection(s), USOA/DOJ never even satisfied § 7401.

9. Where's any evidence supporting any part of the judgment?

The only *evidence* of Record is that submitted by Braquet. *O'Connor* (uncontroverted Affidavit accepted as true). Thus, there is no evidence of Record any where near ***supporting*** this "judgment".

10. Where's the verified assessment?

DOJ added way too much left *English*!

The congress are not the only ones who enjoy outsmarting themselves! DOJ did really well here, themselves.

Since there are, theoretically, criminal charges that may arise from time to time in "income tax" cases, it's not really a violation of the debt collection practices act for DOJ to haul off and charge someone criminally in the "income tax" setting. However, that ***does*** change the collections case, rather drastically. It transforms the case from a § 7401 case to a § 7201 case. Moreover, since it's not just "evasion" that DOJ so boldly charges, but "evasion" of "***payment***", DOJ instantly obligates itself under *England* to produce and prove up a verified assessment.

So, where is it?! Where's the verified assessment?

Capacity

11. How is the satisfaction of the "14th Amendment" reflected in any of the trial court's orders?

Judicial Notice.

Mandamus

12. Isn't this void judgment properly vacated?

Mandamus standard.

Kerr, 426 U.S. at 403.

Cf. Ex Parte Fahey (mandamus is reserved for the extreme cases); *Will*, 389 U.S. at 95 (mandamus

appropriate to address "usurpation of power"); *Bankers Life*, 346 U.S. at 383 (mandamus appropriate to address "clear abuse of discretion").

Mandamus and void judgments.

Cotton Mills, 237 U.S. at 196-97. *Cf.* "[A] judgment will never be considered final if the court lacked subject-matter jurisdiction." *Dubai Petroleum Co.*, 12 S.W.3d at 76. A void judgment may be challenged collaterally. *Cf. Schlesinger* (same principles apply in court-martial setting); *Klapprot* (citizenship can't be revoked until activity giving rise to that consequence has been proved).

13. Isn't this case properly dismissed?

Braquet's duty to mitigate damages.

As much as Braquet would enjoy the discovery phase, which is the long-term view toward mitigation of damages, Braquet mitigates damages better in this case, short-term, by encouraging dismissal.

Dismissal is certainly fitting and appropriate.

Where a statute of limitations defense regarding preservation of claims for appeal results in a duty to dismiss an appeal, *Eberhart* (FED. RS. CRIM. P. 33, 37), how much more clear is the duty to dismiss a case over which the trial court has no subject matter jurisdiction? *J. H. Munson Co.* (if "no standing", then the Court has the duty to dismiss); *McNutt* (burden on complainant to plead and prove jurisdiction; failure of such results in a duty to dismiss); *Tidal Oil Co.* (failure to state a claim within federal jurisdiction gives rise to duty to dismiss); *Chase* (complainant's failure to establish jurisdiction gives rise to duty to dismiss).

Remedies and Relief Requested

Given the foregoing, Braquet requests

1. That this Court assert its supervisory authority in aid of its appellate jurisdiction;
2. That this Court give all interested parties the opportunity to respond to this verified petition;
3. That this Court vacate the trial court's "final judgment" as void;
4. That this Court supply supervisory guidance, and only if necessary, issue a writ of mandamus;
5. That the guidance encourage dismissal;
6. A quick "three-liner", e.g., "appellate and trial judgments vacated; trial court instructed to dismiss; mandamus only if necessary", so as to enlighten the *appellate* court regarding discretion, which lesson won't come an instant too soon;
7. That this Court not only vacate the appellate court's decision but also overrule *Stearman*, thereby relieving the *trial* courts who know better from having to go through this any more;
8. The opportunity to brief any additional issues the Court may identify;
9. The non-argument calendar;
10. Costs; and
11. Any and all other relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Louto J. Braquet, Jr.
Louto J. Braquet, Jr.
I reserve all my rights

c/o 11630 Sagecanyon Drive
Houston, TX 77089

Verification

Per 28 U.S.C. § 1746, under the penalty of perjury, I, Louto J. Braquet, Jr., depose and declare (or certify, verify or state), that I am at least 21 years of age, that I am competent to make this Affidavit, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts stated in this Petition for a Writ of Mandamus are true and correct.

Further, Declarant sayeth not.

Executed on this the 22nd of February, 2008

/s/ Louto J. Braquet, Jr.
LOUTO J. BRAQUET, JR., Declarant

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Appendix A

Rule 14.1(i)(i)—Appellate Opinion(s)

2008 Jan 29—Fifth Circuit's denial of mandamus (and stay)

U.S. COURT OF APPEALS
FILED
JAN 2 9 2008
CHARLES R. FULBRUGE, III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-20023
USDC No. 4:07-CV-2926

IN RE: LOUTO J BRAQUET, JR

Petitioner

Petition for a Writ of Mandamus
to the United States District Court
for the Southern District of Texas

Before KING, DeMOSS, and SOUTHWICK, Circuit Judges.

PER CURIAM:

Louto J. Braquet, Jr. has filed in this court a pro se petition for a writ of mandamus and a motion for stay of execution of judgment. His petition addresses

the final judgment of the district court in a suit by the United States to reduce to judgment income tax assessments against Braquet, to foreclose federal tax liens on his real property, and to obtain the sale of the property. Braquet responded to the Government's complaint with a plethora of objections and motions to dismiss. He argued, inter alia, that no agent of the "United States" could be authorized to sign for the plaintiff "United States of America," that no Act of Congress can impose an income tax obligation and Braquet has never voluntarily entered into an agreement to act as fiduciary for the United States of America, and that, in order to recover, the United States of America must prove under the Patriot Act that it does not finance terrorism. [⊥ 2]

At a pretrial conference, the district court rejected Braquet's arguments and granted the Government's requested relief. Judgment was entered on December 5, 2007. Braquet filed postjudgment motions six days later, which the district court denied on December 13, 2007. Braquet filed, and continues to file, further postjudgment motions in the district court. In his mandamus petition, filed on January 11, 2008, he iterates his "shopworn arguments characteristic of tax-protester rhetoric that ha[ve] been universally rejected by" the federal courts. *See Stearman v. CIR*, 436 F.2d [sic] 533, 537 (5th Cir. 2006). Braquet asks that we "encourage" the district court to vacate its judgment and grant one or more of his motions to dismiss.

The mandamus remedy is an extraordinary one, granted only in the clearest and most compelling cases in which a party seeking mandamus shows

that no other adequate means exist to attain the requested relief and that the right to the issuance of the writ is "clear and indisputable." *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). Mandamus is not a substitute for appeal. *Id.*

Braquet has made neither showing. Nor has he filed a notice of appeal from the district court's judgment. Although that judgment became final on December 13, 2007. Braquet asserts that, because the district court had no jurisdiction and thus the judgment is void, he cannot appeal. Braquet is wrong in this assertion but, because he expressly states that he cannot appeal, we decline to interpret his mandamus petition and related pleadings as a notice of appeal, despite the fact that they were filed within the time set out in FED. R. APP. P. 4(a). *Cf. Yates v. Mobile Cty. Personnel Bd.*, 658 F.2d 298, 299 (5th Cir. 1981) (mandamus petition that clearly evinces intent to appeal may qualify as notice of appeal).

The petition for a writ of mandamus and the motion for stay are DENIED.

2008 Jan 29—Fifth Circuit's Clerk's cover letter

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

January 29, 2008

Mr Michael N Milby, Clerk
Southern District of Texas, Houston
United States District Court
Room 1217
515 Rusk Street
Houston, TX 77002

No. 08-20023 In Re: Braquet
USDC No. 4:07-CV-2926

Enclosed is a certified copy of the judgment issued as the mandate.

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: */s/ Chris Descant*
Chris P. Descant, Deputy Clerk
504-310-7704

cc: w/encl:
Honorable Lynn N Hughes
Mr Louto J Braquet Jr

MDT-1

Rule 14.1(i)(ii)—Additional Orders

2007 Dec 5—Trial Court, Final Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America,	§	
Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr.,	§	
et al.,	§	
Defendants.	§	

Judgment of Title and Possession

1. Louto J. Braquet, Jr., is indebted to the government in federal income taxes, penalties, and interest of $98,689.56.

2. The government's federal-tax lien is foreclosed, and it has title and possession of real property at 11630 Sagecanyon Drive, Houston, Texas. The Sagecanyon property is Lot Twelve, Block Sixteen of Sageglen, Section Two, a Subdivision in Harris County, Texas, according to the Map recorded in Volume 246, Page 34, of the Map Records of Harris County, Texas.

3. Braquet must vacate the Sagecanyon property by January 9, 2008.

Signed on December 5, 2007, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

2007 Sep 27 (?)—Trial Court, unsigned, undated order setting Rule 16 settlement conference

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America	§	
	§	
versus	§	Civil Action
	§	4:07-cv-02926
Luoto [sic] J Braquet,	§	
et al.	§	

Order for Conference

1. The plaintiff must accomplish service within 60 days.

2. Counsel must appear for an initial pretrial conference on:

Judge Lynn N. Hughes
December 3, 2007, at 11:00 AM
515 Rusk Avenue, Room 11122
Houston, Texas.

3. Initial disclosure may not be delayed. Documents and other disclosures must be exchanged, reviewed, and discussed with opposing counsel well before the conference.

4. No interrogatories, requests for admission, or depositions may be done without court approval.

5. A joint discovery plan is not required. Counsel must (a) master the facts, (b) ascertain the discovery needed, (c) discuss it with each other, and (d) be

prepared to discuss discovery in a conference so that the court may fashion a brief, effective management plan.

6. The court will schedule additional preparation and may not rule on motions pending or made at the conference.

7. To insure full notice, each party who receives this notice must confirm that every party knows of the setting.

8. Failure to comply with this order may result in sanctions, including dismissal, and prolonged tirades by the court.

Lynn N. Hughes [italics in original]
United States District Judge

[⊥ 2]

Judge Lynn N. Hughes

Courtroom 11-C, Eleventh Floor
United States Court House
515 Rusk Avenue, Room 11122
Houston, Texas 77002-2605
(713) 250-5900

Dawna Kelly, Case Manager
United States District Clerk
Post Office Box 61010
Houston, Texas 77208-1010
(713) 250-5516
Dawna_Kelly@txs.uscourts.gov

Procedures. Suggestions for practice before Judge Hughes may be found at www.txs.uscourts.gov Please read them.

Contact. Make case-related telephone inquiries to the case manager only. Counsel should alert the case manager to matters requiring prompt attention.

Information. Get information about filings, orders, or docket entries from the computer or from the clerk's office at (713) 250-5500 or (800) 745-4459.

Letters. Do not write letters. Put your message in a document with the case style.

Emergencies. Apply for immediate relief through the Intake Section of the Clerk's Office, 515 Rusk Avenue, Houston; (713) 250-5150.

Counsel should send a copy of emergency motions directly to the case manager so that they quickly reach the court's attention. In case of an emergency when the case manager cannot be reached, please call the judge's secretary, Kathy Grant, at (713) 250-5900.

Continuances. Joint motions for continuance do not bind the court. The court will respect counsel's vacations.

Discovery Problems. The court will hear oral motions that affect discovery or scheduling as soon as both counsel can appear in person or by telephone.

2007 Dec 13—Trial Court, Denial of motions to vacate and for stay

---

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America,	§	
Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr.,	§	
et al.,	§	
Defendants.	§	

Order Denying Modification of Judgment

1. Louto Braquet's motion for stay of execution of judgment is denied. (20)

2. Louto Braquet's motion to vacate the judgment of December 5, 2007, is denied. (22)

Signed on December 13, 2007, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

2008 Jan 7—Trial Court, Denial of motions for stay (construed from responses)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America,	§	
Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr.,	§	
et al.,	§	
Defendants.	§	

Order Denying Modification of Judgment

Louto Braquet's motions for stay of execution of judgment are denied. (28, 29)

Signed on January 7, 2008, at Houston, Texas.

/s/ *Lynn N. Hughes*
Lynn N. Hughes
United States District Judge

2008 Jan 8—Trial Court, Denial of motion for new trial

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America,	§	
Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr.,	§	
et al.,	§	
Defendants.	§	

Order Denying New Trial

Louto Braquet's motion for new trial is denied. (30)

Signed on January 8, 2008, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

2008 Jan 17—Trial Court, Denial of motion to dismiss, Rule 4(m)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States of America, Plaintiff,	§	
versus	§	Civil Action H-07-2926
Louto J. Braquet, Jr., *et al.*, Defendants.	§	

Order Denying Dismissal

Louto Braquet's motion to dismiss for untimely service of process is denied. (34)

Signed on January 17, 2008, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

None

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record will suffice